P10

O.F. 77.

19 38

Department of Land Revenue and Settl

OFFICE Board of Revenue

STATION Madras

File No. 2477

B 4549/38

Dated 5.9.38

DESPATCHED
7 SEP 1938

Pages in the file

(SUBJECT.)

Assignment (land (Kasaragod) Mangalore TK
Dispute - [illegible] TK and TE - Thro Collector
Madras - [illegible] Received.

BEFORE THE HON'BLE THE BOARD OF REVENUE,

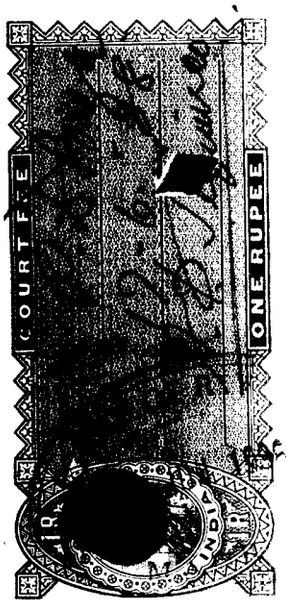
LAND REVENUE.

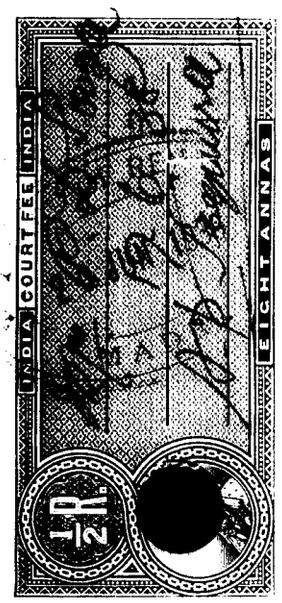
Darkhast Revision Petition No. of 1938.

Mrs. Louisa Rodrigues, widow of)
the late Mr. P. G. Rodrigues,) Petitioner.
Balmatta, Mangalore. ... .)

and

1. Raghunatha Naika, son of)
Sujir Seshigiri Naika,)
Shedigudda, Mangalore Town.)
) Respondents.
2. Keshava Naika, son of Mudla-)
-giri Naika residing in Pent)
-landpetah, Mangalore Town.)





The Petitioner abovenamed begs to file this Revision Petition against the proceedings of the Collector of South Kanara D. Dis No.1382-38 dated 11th March 1938, dismissing the petitioner's Revision petition dated 5-3-1938 against the proceedings of the Revenue Divisional Officer, Mangalore Division, D. Dis. No.5616/1937 dated 7th December 1937 dismissing the petitioner's appeal dated 30-10-1937 against the Buntwal Deputy Tahsildar's order in D. R. No.277/1346 assigning S. No.31/1C and Survey No.31/1E to the 1st and 2nd Respondents, on the following among other grounds:-

1. The Collector has not assigned any reasons for declining to interfere.

2. The Revenue Divisional Officer erred in holding that the division of Survey No.31/1 which forms the subject matter of darkhast in Original Suit No.339/1917 on the file of the District Munsif of Mangalore was made by the Commissioner in the first instance and by the -

Court afterwards under a misrepresentation. The Revenue Divisional Officer failed to see that the Commissioner appointed by the Court could only divide properties which formed the subjectmatter of the suit and therefore there could ~~be~~ not have been any misrepresentation by the party to the Commissioner. While it may be conceded that the division made by the Court may not be binding on Govern--ment as the plot divided was classed at that time assessed waste, the division is not only binding on the parties to the suit but also evidences their possession and enjoyment thereof from as long back as 1917.

Mps 59-61 (I)

3. The fact that at the time of the local inspection by the Revenue Divisional Officer the land in question was a bare hillock is no ground for holding that the land was in that condition at the time of the partition. The Revenue Divisional Officer has clearly failed to note that the plot contained even at the time of inspection atleast 2 buildings marked AA and BB and also a portion of the house building of one Aisamma in S. F.31/1A and 1D. The persons who constructed these buildings are interested in property of patta No.18 which is a joint patta stand--ing in the name of petitioner and other and to which the partition suit aforesaid related. It is the joint pattadars that gave consent for the assignment of the whole plot 31/1 to the petitioner.

4. The Revenue Divisional Officer has failed to see that the darkhast land even as it is, is the only pasture land for the lands of patta No.18 and that the plot is clearly separated from the ~~buildings~~ holdings of the Respondents by the public Road S.No.162 and also by the poromboke road marked AAAA and by the high wall BBBB. For the reasons mentioned above the Revenue Divisional -

Mps 59-61 (I) 3

Officer ought to have held that the kumaki privileges of Respondents had been lost by reason of adverse possession and enjoyment from prior to 1917.

5. The Revenue Divisional Officer has failed to consider that ~~there~~ a large number of persons are interested in the properties of patta No.18 which pays an assessment over Rs.300/- and by themselves they form a section of the public whose interests are clearly affected by assigning the plots in question to the Respondents who at no time had any possession and en-joyment thereof and who at no time claimed any interest therein except in the present proceedings.

6. The order of the Revenue Divisional Officer is vitiated by mistakes of fact and law and the interests of the public being affected as stated above.

7. On grounds of equity also the petitioner is entitled both in her own right as co-pattadar and also by the consent of the other co-pattadars to the entire S.No.31/1 in favour of the Petitioner because the petitioner has no other land in aid of the cultivation of her kadim lands paying an assessment of Rs.250/- and adjoining the darkhast land to serve as pasture ground. There are not even house sites for tenants' houses in the petitioner's property and the assignment of the entire S. No.31/1 is an absolute necessity to petitioner.

8. The Revenue Divisional Officer has altogether ignore the assignments already made to Mudlagiri Naika father of the 2nd Respondent Keshava Naik amounting in extent to 12 acres and 9 cents in Sevinagudde and Gujirgudde for their kadim lands. Similarly the 1st

Respondent or his predecessors in title have been granted vast darkhast lands for his property, the parti-culars of which have been already shown in the darkhast appeal and which are again given below.

It is therefore prayed that the Hon'ble the Board of Revenue may on revision be pleased to set aside the assignment made to the Respondents and to assign the plots to the Petitioner.

D. R.Nos.	Names of darkhastdars.	Extent. A.	C.	Remarks.
103/1324	Mudlagiri Naika	4	-	In Sevinagudde
270/1324	Do.	3	84	In Sujirgudde.
481/1324	Do.	4	25	In Sivngudde.
		12	09	
347/1324	Narasinga Naika	8	97	Govindathota side.
347/1324	Achutta Naika	1	03	Do.
259/1323	Padmanabha Naika	5	95	In Sivanagudde
481/1323	Ramachandra Naika	3	70	Do.
212/1324	Vaikunta Naika	1	34	In Sujir.

List of documents accompanying the Petition.

1. 16-12-1922 Certified copy of the Commissioner's report in Original Suit 339/1917. 9-11
2. " Certified copy of list prepared by the Commissioner in O. S. No.339/1917 allotted to Plaintiff's share. 13-15 C
3. " -Do- -do- to 1st defendant. 17-19 C
4. " -Do- -do- to 2nd defendant. 21 C
5. " -Do- -do- to 3rd defendant. 23 C
6. " -Do- -do- to defendants 6 to 8. 25-27 C

7.	16-12-1922	Certified copy of plan prepared by the Commissioner in O. S.No.339/1917.
8.	28-2-1923	Revised final decree in O. S.No.339/1917 on the file of the District Munsif of Mangalore.
9.	28-1-1923	Commissioners report attached to the above decree.

Mangalore,)
)
Dated 14-6-1938.)

L. Rodrigues

Petitioner.

Asst R.I

Sir John Hall

C.F. 16.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..	13/7	
When copied ..	13/7	
When examined ..	13/7	
When signed ..		
When despatched.		

SUBJECT :— Assignment Land. (S. Kanara) Mangalore Tq. - Pendency of - S. Nos. 31/1C and 131/1E - Petn Mrs. Louisa Rodrigues - Petn transferred -

READ AGAIN ..... dated ..... 19....

" " ..... " ..... 19....

READ *ALSO* :—

PP 1-6cf B No. 4549 From the Petn. from Mrs. Louisa Rodrigues No. ....., dated 14.6.1938. Q

" ..... " ..... " ..... " ..... 19....

" ..... " ..... " ..... " ..... 19....

Refer B. ~~Order Ms. Resolution Rout.~~ No. 4549/38-1, dated 12-7-1938.

Forwarded to the Collr. of S. Kanara for submission of the records with any remarks which he considers necessary regarding the allegations in the petn which are not clearly dealt with in the records.

Pm 11/7/38

11.7

27/38

To the Collr. of South Kanara with Petn. Enclosures

PP 1-44 cf.

To be returned with reply.

D.D[illegible]. 1838-38.

Proceedings of the Collector of South Kanara dated [illegible] March 1938.

P.R.Rr. Rao Bahadur P.V.Vellodi, M.L.,B.A.

Assignment - Land - Mangalore Taluk - Pandi[illegible] S.Nos. 81/1C and 81/1E -Revision petition - Dismissed.

Revision petition dated 8-8-38 of Mrs. Lodisa Rodrigues Widow of P.G. Rodrigues of Mangalore filed through Vakil Mr. P.D.Souza.

Copies of (1) Assistant Dy. Collector's order D.R.[illegible]/38 dated 20-8-37 and

(2) Mangalore Rev. Divl.Officer's order D.D. 5716-37 dated 7-10-37.

O r d e r.

I decline to interfere in revision. The petition is dismissed.

(By order)

J.S.Sreenivasa 12.3.38
Huzur Secretariat.

To the petitioner through her Vakil Mr. P.D.Souza, B.A.,B.L., Mangalore.

Copy to Dy.Collector, Bantwal through Rev.Divl.Officer, Mangalore (in duplicate).

12.3.38

Asst R)

-45- Sir John Hall

C.F. 16.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ...	13/7	Sll
When copied ..	13/7	
When examined ..	13/7	
When signed ..		
When despatched.		

SUBJECT :— Assignment - Land - (S. Kanara) Mangalore Tk. - Pandu vgt. - S. Nos. 31/1C and 31/1E - Petn Mrs. Louisa Rodrigues - Petn - transferred -

Clerk 15/7/38

05 JUL 1938

READ AGAIN ..... dated ..... 19....

" " ..... " ..... 19....

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PP 1-6cf B No. 4549 From the Petn. from Mrs. Louisa Rodrigues No. ....., dated 14.6.1938. Q

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Cm 11/7/38

11/7

12/7/38

To the Collr. of South Kanara with Petn. Enclosures PP 1-44 Cf. to be returned with reply.

12/7

D.Dis.4465/38. South Kanara Collector's Office,
Mangalore, dated 14th August 38.

BOARD OF REVENUE
18 AUG 1938
MADRAS

R.P 183
4549/38
B 6007

From

Sri Rao Bahadur M. V. Vellodi, B.A.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue, Madras.

B3

Sir,

ASSIGNMENT - Land - (South Kanara) - Mangalore Taluk - Pudu village - S.Nos.31/1C and 31/1E - Mrs. Louisa Rodrigues- Petition - Reported -

Board's Refce.B.No.4549/38-1 dated 12.7.1938.

*****

I resubmit herewith the petition of Mrs. Louisa Rodrigues together with all its enclosures received with the Board's reference quoted above.

2. The plot S.No. 31/1 of Pudu village measuring acres 2.94 forms common kumaki to the petitioner as well as the two counter petitioners holding kadim lands surrounding it. The plot was apportioned by the Deputy Tahsildar among the three claimants according to the frontage of each. He assigned the subdivision 31/1A measuring acres 1.74 to the petitioner and the two small subdivisions 31/1C (0.24 Ac.) and 31/1E (0.70 Ac.) to the first and second counter-petitioners respectively.

3. The petitioner appealed to the Revenue Divisional Officer against the Deputy Tahsildar's order contending that the whole of S.No.31/1 was allotted to her and the other joint holders of kadim lands S.No.30/1, 6, 7, 8, 31/2, 3 and 25/9A in O.S.No.339/1917 on the file of the Dt. Munsif of Mangalore and that by an agreement entered into among these joint holders the use of S.No.31/1 was solely allotted to her and that thus she had ever since been in the sole and undisturbed possession and enjoyment of the plot. In support of this she also produced the documents which are now filed with the petition to the Board. The Revenue Divisional Officer on a local ---

inspection found that no one had made any effective use of the plot. He also found the Deputy Tahsildar's apportionment to be perfectly just and equitable and therefore dismissed the petitioner's appeal in his proceedings D.Dis.No.5616/37 dated 7.12.37 in which he dealt with all the allegations made by the petitioner.

Pp 59-61 CF of (G)

4. The petitioner thereupon approached me with a revision petition. As the petition did not contain any new grounds besides those already dealt with by the Revenue Divisional Officer and as the petitioner got her due share in the approtionment of the common kumaki, I did not find any reason to interfere in revision and therefore dismissed the petition in my proceedings D.Dis.1382/38 dated 11.3.38.

P 17 (T)

5. The present petition to the Board is only a repetition of the claims urged before me and does not disclose any new grounds. Neither the Government nor the counter-petitioners were parties to the suit referred to by the petitioner. There can, therefore, be no doubt that as observed by the Revenue Divisional officer in the appeal order the Government land S.No.31/1 came to be divided among the petitioner and her co-holders of kadim lands by misrepresentation of facts. Such a division of Government land cannot bind the Government or operate against the counter-petitioners who are under the rules entitled to get their share of the common kumaki land irrespective of the land already assigned to them.

The buildings referred to by the petitioner are solitary tenants' sheds. Two of these sheds are situated on the plot S.No.31/1A assigned to the petitioner and just touch her adjoining warg land while the other is situated on the hosagame land S.No.31/4 of Aisamma and only a portion of it falls in S.No.31/1D which has also since been assigned to her. The existence of these sheds thus indicate no proof of the possession or enjoyment of the entire plot by the petitioner.

(without kumaki privileges)

6. The connected records as noted in the margin are enclosed.

1. Bantwal Dy.Tahsildar's D.R. 277/46 dated 20.8.37.
2. Mangalore Rev.Divisional Officer's D.Dis.5616/37 dated 7.12.37.
3. Heegu file D.Dis 1382/38 dated 11.3.38

16.5.39

For Collector.

No. 184

For Insurance Notices see reverse.
Stamps affixed except in case of uninsured letters not exceeding 2½ tolas or one ounce in weight or on which no acknowledgment is due.

0 — 7 — 0
Rs. As.

Date-Stamp.

CHEPAUK
7 SEP 38
4 30 PM

Received a registered * ——— addressed to ———

* Write here "letter," "postcard," "packet" or "parcel" with the word "Insured" before it when necessary.

Initials of Receiving Officer.

Insured. { *Insured for Rs. (in figures)* ——— *(in words)* ———

Insurance fee Rs. ——— *As.* ——— *(in words).* } *Weight* / *Rates* *Tolas*

Name and address of sender.

NOTICE (1).—The Post Office is not responsible for loss or damage in the case of inland registered articles, unless they are also insured.

(2).—The special conditions and restrictions as to insurance which will be found in the current edition of the Post and Telegraph Guide are binding upon every sender of an Insured postal article by virtue of rules prescribed under the Indian Post Office Act. 1898.

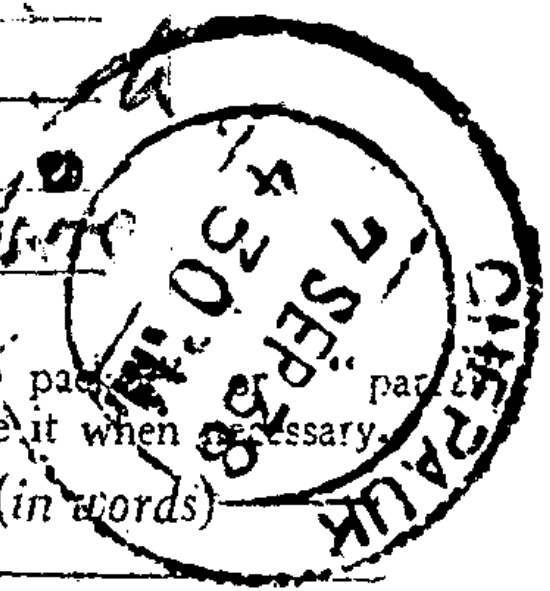
No. 186

For Insurance Notices see reverse.
Stamps affixed except in case of uninsured letters not exceeding 2½ tolas or one ounce in weight or on which no acknowledgment is due.

0 – 7 – 2
Rs. As.

Date-stamp.

Received a registered * ——— **addressed to** ———



——— * Write here "letter," "postcard," "packet" or "parcel" with the word "Insured" before it when necessary.

Initials of Receiving Officer.

Insured for Rs. (in figures) ——— *(in words)* ———

Insurance fee Rs. ——— *As.* ——— *(in words).*

Weight ——— *Tolas*

Rates

Name and address of sender.

———

———

———

NOTICE (1).—The Post Office is not responsible for loss or damage in the case of inland registered articles, unless they are also insured.

(2).—The special conditions and restrictions as to insurance which will be found in the current edition of the Post and Telegraph Guide are binding upon every sender of an Insured postal article by virtue of rules prescribed under the Indian Post Office Act, 1898.

C.F. 16.

DRAFT FOR APPROVAL.

7.W.S

	Date.	Initials.
When received for fair copying ..	6/9	S.
When copied ..	7.9	
When examined..	8/9	H.C. N.P.
When signed	9/9.	
When despatched.		

SUBJECT:— Assignment - Land - (S. Kanara) Mangalore Tk - Puduvge - SNOS. 31/1C and 1E - Mrs Lousia Rodrigues - Petn - Dismissed.

READ AGAIN _____, dated _____ 19____.

" " _____ " _____ 19____.

READ *ALSO*:— . . . .

1-4-44 B No. 4549 From the Petr ~~No.~~ _____, dated 14-6-1938. Q

4-4-44 B " 6007 " Cdlr of S. Kanara D. Dis. 4461/38 " 14-8-1938. Q & Cdlr ord

" _____ " _____ " _____ 19____.

~~Order~~ / Resolution ~~Mot.~~ Ms. No. 2477, dated 5-9-1938.

The petn cited above is a revn petn against the Cdlr's order D. Dis 1382/38 dt/ 11.3.38 declining to interfere with the R.D.O's order rejecting the petr's application for the assignment of S. No. 31/1C and 31/1E of Puduvge, Mangalore Tk.

The Board has perused the connected records. It observes that the plot S. No. 31/1 of Puduvge measuring 2.94 acs. forms common kumaki to the petr as well as to the two counter petrs holding kadim lands surrounding

14

(4)

5/9

it. The plot was apportioned among the three claimants according to the frontage of each of the Board and the Collrs order is correct ~~to~~ ~~interfere~~ ~~on~~ ~~behalf~~ ~~of~~ ~~the~~ ~~pets~~ ~~The~~ ~~petn~~ ~~is~~ ~~dismissed~~.

5/38.

To. Mrs. Lousia Rodrigues,
Widow of the late
Mr. P.G. Rodrigues,
Balmatta, Mangalore with
Encls. pp 9-43 of
to go in orgl
49.

To The Collr of S. Kanara with records 9/7

1) Bantwal Dy Talsis D.R. 277/4 dy 20.8.37

2) Mangalore R. Dis D. Dis 5616/3 dy 7.12.37

3) Collrs D. Dis 13.82/38 dy 11.3.38

Dpd. with Encls.
11/7/9

Note File.

Assignment – Land – (S. Kanara) – Mangalore taluk – Pudu village – S. Nos. 31/1C and 31/1E – Petition – Mrs. Louisa Rodrigues

ASDM

pp 1-6 cf

B 4549. From the Petr.

To Asstt. Secy.

The petn. at pp. 1-6 cf is a revision petn against the cdrs order at P 7 cf. declining to interfere on behalf of the petn in revision and assign the land in S. No. 31/1C and 31/1E of Pudu vge in Mangalore tk. It is adequately stamped and is in time.

The petrs contentions are:

(1) that the R.D.o's order assigning part of S. No. 31/1 to the respondents is incorrect.

(2) that the assignment of the land in question to the respondents is prejudicial to the petrs. It states as the respondents were not in the possession and enjoyment of the land at any time.

(3) that the petrs has no other land to serve as a pasture ground and that the assignment of the entire S. No. 31/1 to her is necessary

(4) That the R.D.O has ignored the arguments of learned advocate already made to the respondents in the places

The Cdlrs order at p7 of C/f does not contain reasons for meeting the allegations. It seems necessary to call for the records and examine them

For orders

9/7/38

Cdlr
11/7/38
11/7/38

ASdr

To A.S.H Secy

Draft submitted

12/7/38

Cdlr
11/7/38
11/7

Issued as Bdr's Ref B 4549/38-1 d/12.7.38 45 C/f.
B. 6007 from the Cdlr of S. Kanara 1, 7-48 C

To A.S (I.R)

The petn at 1-5 C/f is against the Cdlr's order at p7 C/f. Paras 2 to 4 of the Cdlr's letter at pp 47-48 C/f gives the facts of the case

Attention is invited to the sketch at p1 C/f of (I). The Dy Talr assigned S. No. 31/1A measuring 1.74 acres to the Bdr's petr, 31/1C (2.4 cents

to the first counter petn & 31/1E (70 cents) to the second counter petn. The lands assigned to the counter petns form kunrishi to their kadim lands. The R.D.O has explained the position in para 4 of his proceedings at p 60 of q (E) and his order is in accordance with the instructions in the B.S.O Pl. see sub para (1) at p. 59 of B.S.O Vol I.

In the circumstances stated by the Collr, ~~the petn does not appear to~~ there are no grounds for the Board's interference ~~have any case~~.

Note from para 2 above may be read]

For orders.

Ler 26/8
Ag 30/8

31/8/38

M 2/11/9

ASR

To AS(-R).

Draft submitted

5/9/38

Ler 2/9.
Ag 5/9